

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Deshawn B. Hicks, # 301100,

Plaintiff,

v.

**NFN (Sgt.) Mendez; NFN (Cpl.)
Page; NFN (Cpl.) Gregory;
NFN (Lt.) Hardwell; and
NFN Faulkenberry (Warden)
all sued in their individual and
official capacities,**

Defendants.

C/A No. 0:05-354-CMC-BM

OPINION

This action was brought by a state prisoner, proceeding *pro se*, who is seeking relief pursuant to 42 U.S.C. § 1983. In accordance with this court's order of reference and 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Bristow Marchant for a Report and Recommendation on the motion to dismiss pursuant to Rule 12(b)(4) and (5), Fed. R. Civ. P., filed by Defendants Page and Gregory.

This court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

Based on his review of the record, the Magistrate Judge has recommended that the motion be denied without prejudice at this time. A Notice of Right to File Objections to Magistrate Judge's "Report and Recommendation" explaining the procedures for filing objections and the consequences

if none were filed was issued by the court. No objections have been filed and the time for doing so has expired.¹

After reviewing the Complaint, the motion, the record, and the Report and Recommendation of the Magistrate Judge, the court agrees with the recommendation of the Magistrate Judge and incorporates it into this order.

IT IS HEREBY ORDERED that the motion to dismiss filed by Defendants Page and Gregory is **DENIED** *without prejudice*.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
June 21, 2005

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¹Subsequent to the filing of the Report and Recommendation, Defendants Page and Gregory filed an Answer to the Complaint.